

ESTATE OF MAX DOOR

: Order Referring Case for Evidentiary
: Hearing and Recommended Decision
:
: Docket No. IBIA 84-21
:
: June 10, 1985

On February 17, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Philip Plenty Hawk (appellant). Appellant sought review of a December 15, 1983, order denying rehearing issued by Administrative Law Judge Daniel S. Boos in the estate of Max Door (decedent).

The ultimate issue raised in this appeal is the accuracy of the inventory of decedent's Indian trust assets that was prepared by the Bureau of Indian Affairs (BIA) for use by Judge Boos in probating decedent's trust estate. Appellant alleges that certain deeds involving Indian trust land executed by decedent and approved by BIA in 1978 should not have been approved. Alternatively, appellant argues that decedent rescinded these deeds in 1981.

Appellant filed suit in the Federal District Court for the District of Montana, Billings Division, on April 30, 1984. Philip Plenty Hawk v. United States, et al., Civ. No. 84-95-BLG (D. Mont. Filed Apr. 30, 1984). The Board has not been informed by the Department, the United States Attorney handling the case, or the court that it should not proceed with administrative resolution of this matter.

By order dated October 2, 1984, the Board requested BIA to review its records concerning the execution of the 1978 deeds and any subsequent documents purporting to rescind them. BIA was then requested to determine whether the deeds were properly approved and, if properly approved, whether they were rescinded. On February 5, 1985, the Board received BIA's response, which stated that the deeds were properly approved and were not rescinded. The response also contains statements not relevant to the issue before the Board.

Appellant replied to BIA's submission by a response dated March 15, 1985. The response is essentially an offer of proof.

The only questions for resolution in this matter are whether undue influence or other coercion was exercised upon decedent in the execution of the 1978 deeds, and, if those deeds were proper, whether decedent could legally rescind them. The first question requires a factual determination; the second question is an issue of law.

Because the Board finds that there is a genuine issue of material fact in dispute, this case is referred to the Hearings Division of this Office for a hearing and recommended decision by an Administrative Law Judge to resolve the questions of fact and law involved. The hearing shall be conducted in full compliance with the administrative due process standards generally applicable to other hearings proceedings conducted by Administrative Law Judges of the Hearings Division. The present administrative record shall be considered as part of the evidentiary record in the hearing.

Pending the completion of the hearing and the issuance of the recommended decision, any further procedures will be established by the Administrative Law Judge assigned to this case.

Therefore, it is ordered that this case is referred to the Hearings Division for assignment to an Administrative Law Judge who shall conduct a hearing and recommend a decision on the limited questions set forth in this order. As provided in 43 CFR 4.339, any party may file exceptions or other comments with the Board within 30 days from receipt of the recommended decision. The Board will then inform the parties of any further procedures in the appeal or issue a final decision.

Bernard V. Parrette
Chief Administrative Judge

Jerry Muskrat
Administrative Judge

Anne Poindexter Lewis
Administrative Judge